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# In the Supreme Court of the United States

OCTOBER TERM, 1948

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No. 575

SECRETARY OF AGRICULTURE, PETITIONER

*v.*

CENTRAL ROIG REFINING COMPANY AND WESTERN SUGAR REFINING COMPANY, RESPONDENTS

PORTO RICAN AMERICAN SUGAR REFINERY, INC., INTERVENOR

THE AMERICAN SUGAR REFINING COMPANY, ET AL., INTERVENORS

GOVERNMENT OF PUERTO RICO, INTERVENOR

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## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above entitled cause on November 24, 1948. The judgment reversed an order of the

Secretary of Agriculture allotting the direct-consumption portion of the 1948 sugar quota for Puerto Rico.

### OPINION BELOW

The opinion of the Court of Appeals for the District of Columbia Circuit (R. 194-197) is not reported. The findings and order of the Secretary of Agriculture (Puerto Rico Sugar Order 18, R. 160-175) are reported in 13 F. R. 310-313.

### JURISDICTION

The judgment of the Court of Appeals was entered on November 24, 1948 (R. 198). The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254.

### QUESTIONS PRESENTED

When allotting a quota or proration thereof under the Sugar Act of 1948, is the Secretary of Agriculture required as a matter of law:

(1) To measure each allottee's ability to market by actual performance solely during the preceding year, when actual performance is used as the measure of ability?

(2) To measure the past marketings of each allottee by marketings during not more than the preceding six years, regardless of any abnormal conditions that may have existed during that period?

(3) To give some weight to each allottee's processing of sugar from sugarcane to which proportionate shares pertained, notwithstand-

ing the Secretary's consideration of the facts and his conclusion that in the interest of fairness and equity such processings should be given a zero weighting?

## STATUTE AND ORDER INVOLVED

The statute involved is the Sugar Act of 1948 (61 Stat. 922-933, 7 U. S. C., Supp. I, 1100-1160). The Secretary of Agriculture is required by the Act to determine in December of each year the sugar consumption requirements of consumers in the continental United States for the following year, and to establish quotas for the several areas that supply those requirements. The Act itself fixes the quotas for the domestic sugar producing areas (which include the states, territories, and possessions) and for the Republic of the Philippines, and specifies the manner in which quotas for other foreign areas shall be computed.

In addition to these general sugar quotas, Section 207 of the Act limits the portion of the quota for each of several offshore areas (including Puerto Rico) that may be filled with direct-consumption sugar. Direct-consumption sugar is sugar that is not to be further refined or otherwise improved in quality; i.e., usually refined sugar. The balance of the quota may be filled only with raw sugar, which is then refined by the refiners in the continental United States.

The sections of the Act immediately involved are Section 207(b), which fixes the direct-consump-

tion portion of the quota for Puerto Rico at 126,033 short tons, raw value, and Section 205(a), which authorizes the Secretary to allot any quota or proration thereof to the persons who market or import sugar from the area, and specifies the factors to be taken into consideration when making the allotment. The sections are as follows:

> Sec. 207 (b). Not more than one hundred and twenty-six thousand and thirty-three short tons, raw value, of the quota for Puerto Rico for any calendar year may be filled by direct-consumption sugar.
>
> Sec. 205 (a). Whenever the Secretary finds that the allotment of any quota, or proration thereof, established for any area pursuant to the provisions of this Act, is necessary to assure an orderly and adequate flow of sugar or liquid sugar in the channels of interstate or foreign commerce, or to prevent disorderly marketing or importation of sugar or liquid sugar, or to maintain a continuous and stable supply of sugar or liquid sugar, or to afford all interested persons an equitable opportunity to market sugar or liquid sugar within any area's quota, after such hearing and upon such notice as he may by regulations prescribe, he shall make allotments of such quota or proration thereof by allotting to persons who market or import sugar or liquid sugar, for such periods as he may designate, the quantities of sugar or liquid sugar which each such person may market in continental United States, the Territory of Hawaii, or

Puerto Rico, or may import or bring into continental United States, for consumption therein. Allotments shall be made in such manner and in such amounts as to provide a fair, efficient, and equitable distribution of such quota or proration thereof, by taking into consideration the processings of sugar or liquid sugar from sugar beets or sugarcane to which proportionate shares, determined pursuant to the provisions of subsection (b) of section 302, pertained; the past marketings or importations of each such person; and the ability of such person to market or import that portion of such quota or proration thereof allotted to him. The Secretary may also, upon such hearing and notice as he may by regulations prescribe, revise or amend any such allotment upon the same basis as the initial allotment was made.

No sugar from an area may be imported or marketed in the continental United States in excess of the quota for the area or in excess of any allotment of a quota or part thereof (Sec. 209, 7 U. S. C., Supp. I, 1119).

The administrative order involved is Puerto Rico Sugar Order 18 (13 F. R. 310-313), which is set forth in full in the record (R. 160-175). It allots the direct-consumption portion of the 1948 sugar quota for Puerto Rico.

## STATEMENT

Puerto Rico Sugar Order 18 was issued by the Secretary after a public hearing. The Secretary first determined that the allotment was necessary

in order to prevent disorderly marketing and to afford all interested persons an equitable opportunity to market, and he gave notice of a public hearing to receive evidence to enable him to make a fair, efficient, and equitable distribution of the quota (R. 161-162). At the hearing, the Department of Agriculture proposed an allotment formula for purposes of discussion, and evidence was received regarding that and other proposals (R. 162-168, 2-159). The respondents actively participated in the hearing. Upon the basis of the hearing record, the Secretary formulated and issued his decision and order (R. 160-175).

The decision contains findings regarding the need for making the allotment (R. 171-174), and a summary of the evidence bearing upon the manner in which the allotment should be made (R. 162-168). It also contains a detailed discussion of the three statutory standards that must be considered when making an allotment, and an explanation of the reasons governing the Secretary's choice of the method of allotment used (R. 168-171).

With respect to the factor "past marketings" the Secretary recognized that "ordinarily the most recent period of marketings recommends itself as reasonable" (R. 169). As a result of the war, however, the period from 1942 through October 1947 was one "of great abnormality"; during this period there was governmental control of both imports and exports of sugar and many difficulties

were experienced in transportation, storage and the obtaining of essential materials which affected different refiners in varying degrees (R. 169-170). In view of these facts, the Secretary concluded "that the past six years are not representative years for past marketings and should not be used", and that the pre-war years, 1935-1941, inclusive, were to be regarded as representative. For the benefit of refiners who did not operate in all those seven years, the Secretary found that "the use of each refiner's average of the highest five years of marketings during such seven-year period will afford a fair and equitable measure of past marketings" (R. 170). A similar analysis was made in the application of the factor of "ability to market". The Secretary there, too, recognized that "under normal circumstances the selection of a recent year to measure ability would seem reasonable," but that the abnormality of the preceding six years made their use as the sole measure of the ability of all Puerto Rican refineries unfair and inaccurate. Accordingly, the Secretary thought it fair to use the highest of any war or pre-war year since 1935 as a measure of the present marketing ability of each refiner, subject to using present plant capacity as a check on current ability to market (R. 170-171). The Secretary considered the standard of "processings of sugar * * * from * * * sugarcane to which proportionate shares * * * pertained" and found it not applicable to

the direct consumption portion of Puerto Rican sugar quota, since it referred to processings of raw sugar from sugarcane and not to the processings of refined sugar from raw sugar, and because the three largest Puerto Rican refiners (the competing parties in the instant case) do not process raw sugar from sugarcane (R. 168).

In conclusion the Secretary prescribed the formula in making the allotment based upon the foregoing, as follows (R. 174):

> I hereby determine and conclude . . . that in order to make a fair, efficient, and equitable distribution of the direct-consumption portion of such quota, as required by section 205(a) of the act, allotments should be made by giving equal weight to (a) past marketings, measured by the average of the highest five years of such marketings by each refiner during the period 1935-1941, inclusive, and (b) ability to market, measured by the highest single year's marketings during the period 1935-1947, inclusive . . .

Respondents Central Roig Refining Company and Western Sugar Refining Company, two of the three largest refiners in Puerto Rico, appealed from the order of the Secretary to the United States Court of Appeals for the District of Columbia in accordance with the procedure specified in Section 205 of the Act. They challenged the validity of the order on two grounds. They contended: (1) That the order itself is invalid under

the terms of Section 205(a) of the Act because the Secretary erroneously interpreted and arbitrarily and capriciously applied the statutory standards required to be considered when making allotments, and (2) that the statutory limitation in Section 207(b) on the portion of the general Puerto Rican sugar quota that may be marketed in the continental United States in refined form is grossly discriminatory against Puerto Rican refiners and is therefore invalid under the due process clause of the Fifth Amendment.

Porto Rican American Sugar Refinery, Inc., the largest of the Puerto Rican refiners, intervened for the purpose of defending the Secretary's order against the attack on statutory grounds.[1] The American Sugar Refining Company and other continental refiners of sugarcane intervened for the purpose of defending the order against the attack on constitutional grounds. The Government of Puerto Rico intervened for the purpose of attacking the constitutionality of the statutory restriction.

The Court of Appeals for the District of Columbia reversed the Secretary's order on the basis of its conclusion that, as a matter of law, none of the three statutory standards had been properly interpreted and applied.

The court's decision is based upon its interpre-

[1] The remaining three refiners that received small allotments under the Secretary's order did not become parties to the action.

tation of the statutory standards themselves, and not upon a review of the record to determine whether the Secretary's judgment on the facts was arbitrarily or capriciously exercised.[2] Judicial review is limited by the Act to questions of law, and the Secretary's findings of fact, if supported by substantial evidence, are made final unless they are shown to be clearly arbitrary or capricious. Because the court reversed the Secretary's order on statutory grounds, it refrained from deciding whether Section 207(b), which imposes the limitation upon the portion of the Puerto Rican sugar quota that may be filled with direct-consumption sugar, is authorized by the Constitution. Judge Edgerton dissented from this aspect of the court's opinion, and expressed the view that the constitutional question should have been decided.

SPECIFICATION OF ERRORS TO BE URGED

The court of appeals erred:

(1) In holding, as a matter of law, that an allottee's ability to market the portion of the quota allotted to him may not be measured by actual performance more remote than performance during the preceding year;

[2] In its factual statement the court characterized the order as "very favorable" to one of the intervenors. The characterization is unjustified because the court did not purport to review the evidence to determine whether the Secretary made a fair and equitable distribution of the quota. Without such review it is impossible to determine whether the order is favorable or unfavorable to anyone.

(2) In holding, as a matter of law, that it is doubtful whether the statutory standard "past marketings" includes marketings for more than the last half dozen years, and that marketings during the six wartime years 1942-1947 may not be excluded from consideration regardless of the abnormal conditions that prevailed;

(3) In holding, as a matter of law, that the statutory standard "processings of sugar from sugarcane to which proportionate shares pertained" must be given some weight, notwithstanding the conclusion of the Secretary that the standard is inapplicable to the situation in Puerto Rico, and that in the interest of fairness and equity (which is the controlling statutory guide) the standard should be given a zero weighting;

(4) In reversing the order of the Secretary.

REASONS FOR GRANTING THE WRIT

1. The Government submits that the court below has misconstrued the statutory standards that must be considered by the Secretary when allotting a quota or portion thereof under the Sugar Act of 1948. The controlling statutory guide is that an allotment shall be made "in such manner and in such amounts as to provide a fair, efficient, and equitable distribution" of the quota. The Act directs the Secretary to reach that result "by taking into consideration" three specific standards. The

controlling guide, however, remains a fair, efficient and equitable distribution.

(a) The Secretary considered the specific standard "ability to market" and concluded that the present ability of each allottee could best be measured by its actual performance in the past rather than by its present plant capacity, inventory of raw sugar supplies, marketing outlets, or other comparable factors. Those factors represent only a potential or hypothetical ability to market sugar, while actual performance shows a demonstrated ability. Plant capacity, however, was used as a check on the accuracy of the measurement. That is, the Secretary concluded that demonstrated ability in the past would be taken as a reliable measure of present ability if it was within the limits of present plant capacity. In view of the disruptive effect of the war on the marketing of sugar, the Secretary also concluded that it would be fair to use the best single year's performance of each refiner during the preceding thirteen years, subject to the limitation regarding present plant capacity. In recognizing the abnormal situation created by the war, the Secretary followed a practice the Department of Agriculture has followed consistently in the administration of other quota programs—the practice of making allowances for non-typical years due to a major crop failure, fire, drought, hurricane, or comparable factor.

The Court of Appeals held that actual perform-

ance is a permissible measure of ability to market,[3] but that as a matter of law the only performance that may be considered is performance during the preceding year, regardless of any abnormal situation that may have prevailed then. The court said that performance during twelve of the thirteen years permitted to be considered by the order under review had nothing to do with ability to market in 1948, and that under the terms of the Act the only performance that may be used as a measure of ability is current performance, meaning performance during the preceding year.

The court's interpretation of the statute is clearly erroneous. The meaning of the statutory standard is plain. The only issue presented is the reasonableness of the method used by the Secretary to measure ability to market. The reasonableness of the method depends upon the facts, and the court did not consider the facts. It concluded, as a matter of law, that regardless of the facts ability to market may not be measured by actual performance more remote than performance during the preceding year. The court did not say that the Secretary had acted arbitrarily in allowing ability to be measured by performance during a particular year prior to 1947. It said that as a matter of law the act does not permit ability to be measured by performance during

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[3] See statements of the same court to the same effect in *Gay Union Corp.* v. *Wallace*, 71 App. D.C. 382, 112 F. 2d 192, 197, 199, certiorari denied, 310 U.S. 647, a case arising under the Sugar Act of 1937.

any such prior year. It is submitted that there is no basis for that conclusion. If for any reason performance figures for the preceding year are not a fair measure of ability, there is no rational basis for the conclusion that performance figures for an earlier year may not be used. Whether such figures should be used is a matter of judgment for determination by the Secretary, and not a matter of law unless the Secretary's action is shown to be clearly arbitrary or capricious.

(b) The Secretary considered the standard "past marketings", and concluded that the past marketings of each refiner should be measured by the average of its highest marketings during five of the seven years in the prewar period 1935-1941. Marketings during the war years were excluded from the measure because the abnormal marketing conditions that prevailed made them an inappropriate base for a fair and equitable allotment, which is the controlling statutory requirement.

The court below held that in excluding marketings during the war years the Secretary failed to comply with the Act, that the prewar marketings considered by him were no measure of past marketings, and that it is doubtful whether the Act permits a consideration of marketings for more than the preceding half dozen years.

The Act is not properly subject to that interpretation. It prescribes no fixed period to be used by the Secretary when considering past marketings,

and the court may not properly read into it a six-year limitation. In other quota legislation, when Congress has intended that marketings for a fixed period be considered it has said so.[4]

Similarly, the Act does not require the most recent past marketings to be included if there is good reason for excluding them. The Secretary is directed in general terms to make a fair and equitable allotment by considering past marketings. No particular period of past marketing is specified, and the period selected for consideration must be one that will allow the Secretary to arrive at the equitable result required by the Act. In other legislation involving the allotment of quotas for agricultural products the Secretary is specifically required when considering past marketings and past production to make due allowances for abnormal weather conditions.[5] The general and

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[4] In the Agricultural Adjustment Act of 1938, Congress has provided that the national marketing quota for tobacco shall be apportioned among the states on the basis of the total production of tobacco in each state during the five years immediately preceding the year in which the quota is proclaimed (52 Stat. 47, 7 U.S.C. 1313(a)). Similar provision has been made for the apportionment of marketing quotas at the state or county level for corn, wheat, cotton, rice, and peanuts (52 Stat. 52, 7 U.S.C. 1329(a); 52 Stat. 53-54, 7 U.S.C. 1334(a)(b); 52 Stat. 57, 7 U.S.C. 1344(a)(c); 52 Stat. 61, 7 U.S.C. 1353(a); 55 Stat. 89, 7 U.S.C. 1358(c)). In contrast, the act requires some allotments at the farm level to be based in part on past marketings, but the period to be considered is not specified (52 Stat. 47, 7 U.S.C. 1313(b); 52 Stat. 61, 7 U.S.C. 1353(b); 55 Stat. 89, 7 U.S.C. 1358(d)).

[5] Agricultural Adjustment Act of 1938, 52 Stat. 31, 7 U.S.C. 128, *et seq.*, secs. 313, 329, 334, 344, 353, 358.

unrestricted language of the Sugar Act should not be construed to preclude the Secretary from making similar allowances when alloting sugar quotas.

The prewar marketings considered by the Secretary clearly were past marketings. Their use and the exclusion of the war years as a basis for the allotment was a matter of judgment rather than statutory power, and the Secretary's judgment should not be set aside unless it is shown to be arbitrary or capricious.

(c) The third standard is "processings of sugar . . . from . . . sugarcane to which proportionate shares . . . pertained." Such sugarcane is sugarcane produced within the limits of individual farm allotments; that is, it is each farm's proportionate share of the sugarcane needed to be produced to fill the quota for the area. Title III of the Act authorizes the Secretary to make conditional payments to producers who, among other things, do not market sugarcane in excess of their proportionate shares. The direction to the Secretary to consider processings from proportionate share sugarcane when allotting the quota for an area is designed to supplement the farm allotment program by encouraging processors to restrict their processing activities to proportionate share sugarcane.

The Secretary considered this standard and concluded that it was not applicable to the particular facts involved in making the Puerto Rican allot-

ment, and that it should therefore be given a zero weighting. It was regarded as inapplicable because the refiners of more than 90% of the sugar used to fill the quota (including the two respondents) did not process sugar from proportionate share sugarcane, and any weight given to a factor that applied only to refiners of less than 10% of the sugar would not produce an equitable result.

The Court of Appeals held that these facts might warrant giving slight weight to the standard, but that as a matter of law the Secretary is required to give some weight to it.

It is submitted that this interpretation is also erroneous. The Act requires only that the Secretary make a fair, efficient, and equitable distribution of the quota "by taking into consideration" the three specific standards, and the Secretary explicitly gave consideration to this factor in the instant case. The Act says only that he shall consider the three standards; it does not say how much weight, if any, he shall give to each of them. If the Secretary determines, after considering all the facts, that a fair and equitable allotment requires a zero weighting to be given to processings of sugar from proportionate share sugarcane, there is nothing in the language of the Act that justifies a conclusion that he must nevertheless give a nominal weight to the standard. The Act makes no more distinction between zero and a nominal weighting of one percent, if supported by substantial evi-

dence, than it does between a 49% and 50% weighting.

The error of the court's interpretation may be illustrated by an hypothetical example. The Act provides for the allotment of different kinds of quotas for different areas, both domestic and foreign. The same statutory standards, however, govern the making of all allotments. If a quota for a foreign area, e.g., Cuba, should be allotted to the importers of sugar from the area, as the Act authorizes, it would be impossible to give this particular factor any affirmative weight. The Act does not provide for the assignment of proportionate shares to individual farms in Cuba. Consequently, no importer-allottee could be a processor of proportionate share sugarcane grown in Cuba, and the standard would of necessity be given a zero weighting.

Thus, the Act cannot be interpreted to require, as a matter of law, that some weight be given to the standard under all circumstances. Whether the Secretary was warranted in giving no weight to it in the order under review depends upon the particular circumstances involved, a factor which the court below did not consider.

2. The interpretation of the statutory standards governing the Secretary's allocations under the Sugar Act presents a question of public importance which has not been, but should be, passed upon by

this Court. *Federal Security Administration* v. *Quaker Oats Co.*, 318 U. S. 218; *Addison* v. *Holly Hill Fruit Products, Inc.*, 322 U. S. 607. The opinion of the court below overturned the Secretary's order, not merely because of factors peculiar to the instant case, but as a result of a pervasive construction of the standards laid down by the statute for the Secretary's guidance. The construction ascribes rigid and inflexible qualities to the statutory standards. The Secretary believes that administration of the sugar program in accordance with that construction will result in serious inequities.

The effect of the court's opinion is of wide scope since it extends to the allotment of any quota and is controlling in the variety of circumstances that will confront the Secretary when allotting quotas for different producing areas. The Act provides for the allotment of a quota or proration thereof for any area supplying the needs of consumers of sugar in the continental United States, and it also provides for the allotment of quotas limiting the amounts of sugar that may be marketed for local consumption in the Territory of Hawaii and in Puerto Rico. The same statutory standards are applicable to all these allotments.[8]

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[8] The Secretary has issued an announcement of public hearings for the purpose of allotting for 1949 the general Puerto Rican quota for consumption in the United States, the direct-

The Act is concerned with sugar produced from sugarcane and sugar beets. The marketings of such sugar are necessarily limited by the availability of sugarcane and sugar beets for its production. Sugarcane and sugar beet production are subject to many recurring weather and other natural hazards. Rarely do such hazards affect all portions of a producing area alike. Growers in some localities of a producing area will suffer crop failures while those in other localities in the same area will produce bumper crops. Occasionally, the production

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consumption portion of that quota, and the quota for local consumption (14 F.R. 80).

The following allotments under the Sugar Act of 1937 show the frequency with which quotas have been allotted and the different areas to which the quotas apply:

| *Area* | *Quota Allotted* | *Citation* |
|---|---|---|
| Domestic Beet Sugar Area | 1939 | 4 F. R. 1742 |
| | 1940 | 5 F. R. 1187 |
| | 1941 | 6 F. R. 2363 |
| Mainland Cane Sugar Area | 1939 | 4 F. R. 1744 |
| | 1940 | 5 F. R. 1598, 5232 |
| | 1941 | 6 F. R. 2497 |
| Puerto Rico (General quota for consumption in the United States) | 1937 | 2 F. R. 1966, 2914 |
| | 1938 | 3 F. R. 1474, 2885 |
| | 1939 | 4 F. R. 1642, 1739 |
| | 1940 | 5 F. R. 1377, 2398 |
| | 1941 | 6 F. R. 2410 |
| Puerto Rico (direct-consumption portion of quota for consumption in United States) | 1938 | 3 F. R. 665, 786, 1077, 2785 |
| | 1939 | 4 F. R. 97 |
| | 1941 | 5 F. R. 4748 |
| Puerto Rico (quota for local consumption) | 1938 | 3 F. R. 1474 |
| | 1939 | 4 F. R. 1642, 1739 |
| | 1940 | 5 F. R. 1377, 2398 |
| | 1941 | 6 F. R. 2410 |

in an entire area will be affected by hurricane, drought, or other production hazard. When growers of sugarcane and sugar beets experience crop losses, those losses are reflected in reduced sugar marketings by the processors situated in the locality where the losses occur.

When alloting a quota, there are times when the only reliable and equitable measure of "ability to market" is actual marketing performance. However, if the Secretary is required to use the previous year's marketings as the measure of such performance the results will be inequitable when the marketings of some processors are reduced by a crop failure or comparable hazard. This measure of ability will then not only result in inequities between processors, but it will also adversely affect growers who normally sell their sugarcane and sugar beets to the processors so affected. If a processor is unable to sell the sugar, there is no incentive for him to buy the sugarcane and sugar beets from the grower. As sugarcane and sugar beets are principally valuable only to processors who can convert them into sugar, the injury to growers is apparent.[7]

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[7] In allotting the 1941 sugar quota for the mainland cane sugar area, the Secretary of Agriculture pointed out this relationship as follows 6 F.R. 2499:

> The act contemplates a method of allotment which will, in addition to providing a fair, efficient, and equitable distribution of the quota, afford protection to producers of sugarcane.

For similar reasons, the use of years of abnormal production when measuring "past marketings" may also result in inequities between processors and hardship to growers. As past marketings are usually measured by marketings for a period of three or more years, the degree of injury may be lessened by the inclusion of both normal and abnormal crop years. However, if a succession of crop failures should occur in the same locality the inequities resulting from the court's opinion would be intensified.

The opinion of the court below may also result in hardship when proportionate shares (acreage allotments) for farms are established under Section 302(b) of the act. That section provides that proportionate shares shall be established on the basis of past production on the farm and ability to produce sugarcane or sugar beets thereon. Frequently, the best measure of ability to produce sugarcane or sugar beets is the actual performance record of the farm. As the language of Section 302(b) and Section 205(a) is substantially the same insofar as the factors of past performance and ability are concerned, the opinion of the court may embarrass the Secretary in the establishment of proportionate shares for farms. If the previous year's production on the farm must be used as the measure of ability to produce sugarcane or sugar beets, it is apparent that great hardship will result to growers who suffered crop failures during that year. Hard-

ship may also result if any year in which a crop failure occurred is required to be used in the measurement of past production on the farm.

In view of the similarity between the language in Section 302(b) relating to the establishment of proportionate shares for farms and the language of Section 205(a) relating to allotments to processors, the following statement by the House Committee on Agriculture in regard to the language of Section 302(b) is significant.[8]

> In view of the differences in conditions of production obtaining in the various sugar-producing areas, the committee has not attempted to specify the exact manner in which the Secretary shall use production history. It is the judgment of the committee that considerable discretion should be left to the Secretary to deal with the varied and changing conditions in the various producing areas, in order to establish fair and equitable proportionate shares for farms in such areas.

It is the opinion of the Secretary of Agriculture that it will be extremely difficult to make future allotments in a manner that will carry out the congressional mandate to make a fair, efficient, and equitable distribution of a quota if the court's interpretation of the statutory standards is not reversed. The rigid mold into which the court has forced the standards will leave little room for the

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[8] H. Rep. No. 796, 80th Cong., 1st Sess. p. 8.

exercise of judgment by the Secretary and little discretion to deal with the varied and changing conditions in the several sugar-producing areas. The objectives of the entire statutory plan will be impaired.

3. The controversy is not moot. Although the order relates only to the marketing of sugar during the year 1948, the order was in effect throughout the year and a determination of its validity is essential to the future collection of penalties for past violations of the order, if any (Sec. 405 of the Act). Moreover, when determining the validity of an allotment order under the earlier Sugar Act of 1937, after the allotment period had expired, the Court of Appeals for the District of Columbia Circuit pointed out that the probability of the issuance of a new order for the following year and the improbability of obtaining judicial review of the new order before the expiration of the allotment period prevented the case from being moot. "A case" is "never moot in a situation in which there is the necessity of deciding a question of law to serve as a guide to the body called upon to act again in the same matter." *Gay Union Corp.* v. *Wallace*, 71 App. D. C. 382, 112 F. 2d 192, 195, certiorari denied, 310 U. S. 647. See also *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission*, 219 U. S. 498, 515-16; *Federal Trade Commission* v. *Goodyear Co.*, 304 U. S. 257; *Panama Refining Co.* v. *Ryan*, 293 U. S. 388, 413-14.

4. The case involves an important constitutional issue. The respondents contended in the court below that the order under review is invalid because the section of the Act fixing the portion of the quota allotted by the order is itself invalid. They contended that the limitation in Section 207 of the Act on the amount of the quota for Puerto Rico that may be filled with refined sugar is grossly discriminatory against Puerto Rican refiners and deprives them of property without due process of law in violation of the Fifth Amendment of the Constitution. The issue involves the power of Congress to regulate commerce between a territory and the states and the applicability of the due process clause to such regulation. The issue was fully argued and briefed but was not decided by the court below because the order was set aside on other grounds. If the Government's contention that the Secretary of Agriculture properly interpreted and applied the statutory standards governing allotments is correct, the constitutional issue will need to be decided.

## CONCLUSION

Wherefore, it is respectfully submitted that the petition for a writ of certiorari to review the judgment of the Court of Appeals for the District of Columbia Circuit should be granted.

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